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IN THE
COURT OF APPEALS OF INDIANA

CATHLEEN QUIGLEY,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 54A01-0604-CV-170
	)	
TOWN COUNCIL, TOWN OF WHITESTOWN, INDIANA, and BOARD OF COMMISSIONERS, BOONE COUNTY, INDIANA,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE MONTGOMERY CIRCUIT COURT
The Honorable Thomas K. Milligan, Judge
Cause No. 54C01-0508-PL-321

January 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Cathleen Quigley ("Quigley") appeals the trial court's grant of summary judgment in favor of the Town of Whitestown Town Council and the Boone County Board of Commissioners ("Defendants").

We affirm.

ISSUE

Whether the trial court erred in granting summary judgment.

FACTS

On June 3, 2004, Quigley, who was approximately three months pregnant, received a seatbelt violation citation from the Whitestown town marshal. Quigley signed the citation, checking the box to indicate that her signature did not constitute an admission of the violation. According to the citation, Quigley could proceed in either of two ways: she could admit to the violation by signing the back of the ticket and submitting the $25 fine via cash, cashier's check or money order to the Whitestown Town Court ("town court"); or she could contest the charge by appearing in the town court on July 16, 2004, for an initial hearing.

Quigley lost her ticket and failed to appear in the town court on July 16, 2004. As Quigley had not yet paid the fine, the town court judge assessed a $25 late fee and instructed the town court clerk to issue a new summons, requiring Quigley to appear on August 20, 2004. The record indicates that on July 23, 2004, the town court clerk mailed the summons to Quigley via regular mail to her address as noted on the citation; however, Quigley denies receipt and claims that the summons was never mailed.

On July 23, 2004, after a chance encounter with the town marshal, Quigley remembered her unpaid citation. She wrote a personal check for $25 and mailed it to the town court. On receipt, the town court clerk returned Quigley's check with a letter informing Quigley that (1) payment must be made by cash, cashier's check or money order; and (2) she now owed $50, which "must be received by August 18, 2004, or your appearance will be required in court that morning as stated in the infraction ticket." (App. 38). Quigley admitted that she received the letter.

Quigley neither submitted payment before August 18, 2004, nor appeared in court on that date. On August 20, 2004, the new initial hearing date, Quigley failed to appear before the court. The town court judge issued a bench warrant for her arrest and certified to the Bureau of Motor Vehicles that Quigley had failed to appear in court. As a result, the Bureau of Motor Vehicles subsequently suspended Quigley's license.

On August 25, 2004, Quigley's husband attempted to pay the citation but found the town court's office closed. The next day, he returned with a $50 money order, which he deposited in the after-hours payment box for utility bills. The town court clerk received the money order on August 27, 2004, and returned it to Quigley by order of the town court judge. In the accompanying letter, the town court clerk wrote,

> We can not accept your money order . . . due to the fact that a warrant has been issued. Your bond has been set at $200.00, which will need to be taken care of through the Boone County Jail. You failed to appear before the court on July 16, 2004 as stated on your ticket . . . . A summons was also issued and mailed via US mail on July 23, 2004 for you to appear in court on August 20, 2004 at 11:00 am. A letter was sent to you dated August 2, 2004 requesting a money order, cashier's check or cash by August 18, 2004 because the court does not accept personal checks.

(App. 41). Quigley admits that she received this letter.

On September 1, 2004, Quigley appeared at the town court office when court was not in session, and asked the judge to recall the warrant; the judge refused and ordered her to surrender to the Boone County Jail and to post the $200 cash bond. Later that day, Quigley, now approximately six months pregnant, surrendered as ordered. Over a two-hour period, she was processed through the jail, posted bond and was released.

Quigley's counsel wrote to the town court clerk on October 19, 2004, enclosing a $50.00 money order and demanding the return of Quigley's cash bond. The following day, the town court judge issued a "Trial Date Setting and Order to Appear," setting Quigley's arraignment for November 22, 2004. At the judge's instruction, the clerk again returned Quigley's money order with a letter to counsel stating,

> The Court is unclear of her plead [sic] since she has not appeared in court before [the judge]. . . . It is the policy of the Court to retain bond moneys until final disposition of case. At which time court costs and fines will be taken out of the cash bond and any excess money will be returned to Ms. Quigley.

(App. 44). In response, Quigley's counsel contacted the Boone County Prosecutor's Office asking that Quigley's case be removed from the town court's trial docket because Quigley "has both admitted to the infraction filed against her, and paid the fine and late fee, in this matter by money order." (App. 45). A deputy prosecuting attorney forwarded counsel's letter to the town court clerk, who then advised Quigley's counsel that "the Court finds this case closed." (App. 47).

On April 12, 2005, in the Boone County Circuit Court, Quigley filed a tort claim for damages alleging false arrest and false imprisonment against the Defendants. On

April 25, 2005, Quigley moved for change of venue, which was granted to the Montgomery Circuit Court. On January 4, 2006, Defendants moved for summary judgment on the grounds that there were no genuine issues of material fact because

> 2. [Quigley] has failed to state a claim for false arrest or false imprisonment.
> 3. Any residual claims were barred under the Indiana Tort Claims Act relating to the enforcement of law and other immunities [pursuant to Indiana Code section 34-13-3-3].
> 4. The Town Court and its employees' actions were not improper and made pursuant to law.
> 5. [Quigley]'s claims are further barred by judicial immunity.

(Quigley's Br. 3). In support of their motion, Defendants submitted a brief and designation of evidence to the trial court. Quigley responded to the Defendants' brief and also tendered her designation of evidence. After a hearing on the motion, the trial court granted summary judgment for Defendants, from which Quigley now appeals.

DECISION

Quigley argues that the trial court's grant of summary judgment was improper because the designated evidence creates genuine issues of material fact. We disagree.

When reviewing a grant of summary judgment, our standard of review is the same as that of the trial court: summary judgment is appropriate if the designated evidence shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). Neither the trial court nor the reviewing court may look beyond evidence specifically designated to the trial court. *Best Homes, Inc. v. Rainwater*, 714 N.E.2d 702, 705 (Ind. Ct. App. 1999). We do not reweigh the evidence, but we liberally construe all designated material in the light most favorable

to the nonmoving party to determine whether there is a genuine issue of material fact for trial. *Estate of Hofgesang v. Hansfor*d, 714 N.E.2d 1213, 1216 (Ind. Ct. App. 1999).

The court must accept as true those facts alleged by the nonmoving party, construe the evidence in favor of the nonmovant and resolve all doubts against the moving party. *Shambaugh & Son, Inc. v. Carlisle*, 763 N.E.2d 459, 461 (Ind. 2002). The party seeking summary judgment bears the burden of making a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Rood v. Mobile Lithotripter of Indiana, Ltd.*, 844 N.E.2d 502, 506 (Ind. Ct. App. 2006). If the moving party satisfies its burden, then the burden shifts to the nonmoving party to designate specific facts showing that there is a genuine issue for trial. *Id*. For summary judgment purposes, a genuine issue of material fact exists where facts concerning an issue that would dispose of the litigation are disputed or where the undisputed material facts support conflicting inferences on such an issue. *Cansler v. Mills*, 765 N.E.2d 698, 701 (Ind. Ct. App. 2002).

A trial court's grant of summary judgment is clothed with a presumption of validity, and the party that lost in the trial court bears the burden of demonstrating that summary judgment was granted in error. *City of Indianapolis v. Byrns*, 745 N.E.2d 312, 316 (Ind. Ct. App. 2001). A grant of summary judgment may be affirmed upon any theory supported by the designated materials. *Bernstein v. Glavin*, 725 N.E.2d 455, 458 (Ind. Ct. App. 2000), *trans. denied.*

1. Judicial Immunity

Quigley argues that once she tendered payment, the town court's jurisdiction ended and "the town judge was under a duty to promptly enter [final] judgment." (Quigley's Br. 26, 27). Further, because the town court judge's bench warrant was issued in the complete absence of jurisdiction, she claims, the judge was stripped of judicial immunity from liability. Additionally, Quigley contends that the town court clerk is not immune, because she failed to mail the summons, which resulted in Quigley being "arrested, jailed and los[ing] her driver's license." (Quigley's Br. 2). We cannot agree.

A judge is entitled to absolute judicial immunity from suits for money damages for all actions taken in his or her judicial capacity, unless those actions are undertaken in the clear and complete absence of jurisdiction over both the parties and the subject matter. *Smith v. City of Hammond*, 848 N.E.2d 333, 338 (Ind. Ct. App. 2006). When judicial immunity is at issue, we construe a judge's jurisdiction liberally. *Id*.

In this matter, there is no question that the town court judge exercised both personal and subject matter jurisdiction over Quigley and the underlying seatbelt infraction. Quigley, as a Whitestown resident, enjoyed the town's benefits, such as its roadways and could reasonably anticipate being haled into court there, if she violated any law concerning those roadways. *Brockman v. Kravic*, 779 N.E.2d 1250, 1250 (Ind. Ct. App. 2002). It was, in fact, as she frequented those roadways, that she was cited for a seatbelt infraction. Under Indiana law, town courts have jurisdiction of all infractions. Ind. Code § 33-35-2-8 (a), (b).

Quigley's attack on judicial immunity hinges on her claim that she satisfied the statutory penalty; we find that she did not. Her attempt to pay on August 2, 2004 did not constitute proper payment because it was not tendered via cash, a cashier's check or a money order, as prescribed, but rather by a personal check, which the town court was not bound to accept. Moreover, Quigley failed to account for the assessed late fee and tendered the wrong amount entirely -- $25 instead of $50.

Because Quigley did not satisfy the statutory penalty, we find that the town court retained jurisdiction over Quigley's person and the underlying seatbelt infraction when it issued the bench warrant. At the time the bench warrant was issued on August 20, 2004, Quigley had neither tendered proper payment nor communicated her plea to the town court. Further, final judgment had not yet been entered; therefore, the town court's jurisdiction over the matter remained intact. The issuance of a bench warrant is undeniably a judicial act, here taken in the town court judge's judicial capacity; thus, the judge is entitled to absolute judicial immunity, as is his clerk.

Quigley also argues that the town court clerk should be personally liable in tort for her injuries, which allegedly resulted from the clerk's negligent failure to mail Quigley's summons. We cannot agree. The court speaks through its records. *Woolley v. Washington Twp. Of Marion County Small Claims Court*, 801 N.E.2d 761, 766 (Ind. Ct. App. 2004). Quigley does not contend that the clerk's letter -- dated July 23, 2004, and requiring payment by August 18, 2004, or Quigley's appearance in court -- and a copy of the summons as part of the court's record, were posted to an incorrect address; nor does she deny receipt of the letter. Quigley has not designated any evidence that raises a

genuine issue of material fact as to whether she received notice, other than her self-serving assertion that the town court clerk failed to mail the summons.

We have previously held that "absolute judicial immunity extends to persons performing tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune." *Newman v. Deiter*, 702 N.E.2d 1093, 1100 (Ind. Ct. App. 1998). Here, the clerk's duties included corresponding with defendants on behalf of the court, executing and enforcing court orders, and issuing summons as ordered by the town court judge. These duties are certainly integral and intertwined with the judicial process. Accordingly, the absolute judicial immunity afforded the town court judge properly extended to the town court clerk.

Quigley further argues that when she tendered payment of $25 by personal check on or about July 23, 2004, that the trial court lost subject matter jurisdiction and personal jurisdiction in this matter. As previously noted, we have found that Quigley did not satisfy the statutory penalty because she failed to tender proper payment to the town court and was properly advised of said failure in the later dated August 2, 2004. Therefore, when the town court issued the bench warrant on August 20, 2004 for Quigley's arrest, the court could still exercise jurisdiction in a proceeding for contempt for Quigley's failure to obey the court's order.

"A contempt action is a proceeding separate and independent of the action from which it arose." *Thompson v. Thompson*, 811 N.E.2d 888, 906 (Ind. Ct. App. 2004) (citing *T. v. State*, 439 N.E.2d 655, 659 (Ind. Ct. App. 1982)). "This principle applies to

direct as well as indirect contempt proceedings." *Skolnick v. State*, 397 N.E.2d 986, 997 (Ind. Ct. App. 1979).

Indiana law recognizes the courts' inherent power to cite and punish for contempt, which may be direct or indirect. *City of Gary v. Major*, 822 N.E.2d 165, 169 (Ind. 2005). "Direct contempts . . . involve actions in the presence of the court, such that the court has personal knowledge of them." *Pryor v. Bostwick*, 818 N.E.2d 6, 12 (Ind. Ct. App. 2004). In contrast, "indirect contempts undermine the orders or activities of the court but involve actions outside the trial court's personal knowledge." *Jones v. State*, 847 N.E.2d 190, 199 (Ind. Ct. App. 2006) (affirming trial court finding that defendant willfully disobeyed deposition subpoena when she never attempted to continue it, to explain her absence or to reschedule). The willful and intentional disobedience of the orders of a trial court may constitute indirect criminal contempt. *Id.*

Quigley was subject to being found in indirect criminal contempt for failing to appear before the town court to answer to the seatbelt violation. She claims that she missed two hearings because she lost her ticket and never received the new summons. These facts notwithstanding, Quigley admittedly made no effort to contact the town court to learn the hearing date after she lost her ticket. Despite receiving the clerk's letter requiring a specified method and amount of payment before August 18, 2004 or Quigley's appearance in court, Quigley neither paid nor appeared in response. Subsequent thereto, the town court judge issued the bench warrant for Quigley's arrest because she disobeyed the court's orders and undermined its authority. The town court

judge exercised judicial authority when he issued the bench warrant, and thus, remained cloaked with judicial immunity.

2. Indiana Tort Claims Act

Quigley contends that the trial court erred when it found that her claim was barred for failure to comply with the notice provision of the Indiana Tort Claims Act. [1] Given our finding that the town court judge and clerk are judicially immune from liability, we do not reach this issue.

We affirm.

NAJAM, J., and FRIEDLANDER, J., concur.

[1] Although Quigley has included what appears to be a notice addressed to the Town of Whitestown Town Council, the Boone County Board of Commissioners and the Indiana Political Subdivision Risk Management and dated November 12, 2004, the document shows no indication of service upon and receipt by Defendants. Specifically, the document shows no file or receipt stamp or a United States certified mail stamp. Nor is it accompanied with a receipt of delivery of the document to Defendants. Furthermore, the trial court specifically found that "[n]o notice was given" to Defendants; and Quigley has failed to designate any evidence in the record to support her assertion that said notice was before the trial court. (Quigley's Br. 10). We mention this omission to point out the importance of including relevant evidence that would be germane to the resolution of an issue. However, whether Quigley properly and timely served a notice of tort claim on Defendants will not change the result that we reach in this case.